

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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| In the Matter of                            | ) |                   |
|   | ) |                   |
| Expanding the Economic and Innovation       | ) | Docket No. 12-268 |
| Opportunities of Spectrum Through Incentive | ) |                   |
| Auctions                                    | ) |                   |

**REPLY COMMENTS OF CELLULAR SOUTH, INC.**

Cellular South, Inc. (d/b/a C Spire Wireless) (“C Spire”) submits these reply comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued in the above-captioned proceeding.<sup>1</sup>

**INTRODUCTION**

The comments filed in this proceeding reflect overwhelming support for the competitive policies C Spire advocated in its filings. Except, of course, for the Twin Bells – AT&T and Verizon – the commenters reflect a chorus of consensus that the Commission’s incentive auction rules should give existing operators and new entrants a meaningful opportunity to acquire spectrum.

While there are minor differences among the details of the proposals put forward by the competitive wireless operators, essentially all agree that the Commission should adopt auction eligibility rules that prevent excessive low-band spectrum concentration and that restore competition and greater participation among competitive operators and new entrants.

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<sup>1</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, Docket No. 12-268 (rel. Oct. 2, 2012) (“NPRM”).

There appears to be nearly unanimous support for ensuring device interoperability across the entire 600 MHz band, and all operators (including even AT&T and Verizon) seem to agree that the Commission should employ spectrum blocks of at least 5 MHz and should clear Channel 51 at the earliest opportunity. Commenters also largely agree on the use of smaller geographic units for wireless licenses, such as Economic Areas or smaller.

Commenters also confirm that the Commission should adopt a band plan that maximizes the amount of licensed spectrum made available to the wireless industry. Low-band spectrum is particularly valuable for competitive operators and new entrants seeking to serve non-urban communities and other areas with limited access to mobile broadband. As a result the Commission should adhere closely to the language of the 2012 Spectrum Act requiring that any guard bands in the 600 MHz spectrum “shall be no larger than is technically reasonable to prevent harmful interference” between licensed users.

## **DISCUSSION**

### **I. A CLEAR CONSENSUS SUPPORTS AUCTION RULES THAT PROMOTE COMPETITION AND INCREASE AUCTION PARTICIPATION**

There is broad agreement in the record with C Spire’s view that the Commission’s incentive auction rules should foster wireless industry competition by enabling competitive operators and new entrants a meaningful opportunity to access low band spectrum.

Congress has given the Commission authority to “adopt and enforce rules . . . concerning spectrum aggregation that promote competition.”<sup>2</sup> It’s therefore no surprise that commenters

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<sup>2</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6404, 126 Stat. 156, 230 (2012).

have recommended several steps that the Commission should take in designing incentive auction rules that would promote participation from competitive carriers.<sup>3</sup> In fact, only the two wireless Bells oppose neutral and objective, generally applicable, eligibility rules that could curb the anticompetitive concentration of spectrum in the hands of the Bell incumbents.

Leap Wireless puts it succinctly: “[T]he need to promote the participation of a wide variety of carriers is especially acute.”<sup>4</sup> C Spire agrees with Sprint and other commenters that “the Commission should establish a goal of maximizing the amount of spectrum that can be auctioned for commercial use by multiple competitors, ensuring that whatever band plan and service rules are adopted provide the opportunity for as many wireless operators as possible to obtain useful spectrum.”<sup>5</sup> U.S. Cellular also notes, “the wireless market currently lacks healthy competition, and the level of competition has continued to decrease in recent years.”<sup>6</sup>

AT&T and Verizon, of course, have urged the Commission to eliminate limitations of any kind on their ability to acquire as much spectrum as possible, regardless of the anti-competitive consequences.<sup>7</sup> They also argue that objective limits on spectrum aggregation would somehow harm competition and auction participation.<sup>8</sup> These assertions are, at best, circular.

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<sup>3</sup> See, e.g., Leap Wireless Comments at 7-8, T-Mobile Comments at 23-35, U.S. Cellular Comments at 30-34, Sprint Nextel Comments at 7-10, Cellular South Comments at 5-6; Free Press Comments at 14-15.

<sup>4</sup> Leap Wireless Comments at 3.

<sup>5</sup> Sprint Nextel Comments at 2.

<sup>6</sup> U.S. Cellular Comments at 3.

<sup>7</sup> See AT&T Comments at 79-80, Verizon Comments at 38-43.

<sup>8</sup> AT&T Comments at 79-80; Verizon Comments at 40-41.

Their argument is essentially this: because AT&T and Verizon currently have dominant spectrum positions (collectively, AT&T and Verizon hold 75% of all wireless spectrum under 1 GHz),<sup>9</sup> they should be permitted to further entrench their market power over competitors and consumers, without constraint. This view is nonsensical and inconsistent with the Commission's directive to promote competition.

To the contrary, the Commission has substantial reason to increase competition by promoting broad auction participation. First, the industry is heavily consolidated today. As of 2010, per the Herfindahl-Hirschman Index (“HHI”), wireless industry consolidation measured 2,848—nearly 350 points *above* the HHI’s threshold of a “highly concentrated” market.<sup>10</sup> That, among other reasons, is why the Commission continues to be unable to conclude in its Wireless Competition Reports that the wireless industry is characterized by effective competition.<sup>11</sup> Similarly, the Commission’s recent Mobile Spectrum Holdings NPRM recognizes that the wireless marketplace has undergone significant consolidation.<sup>12</sup> Surely, Congress had these same circumstances in mind when it inserted clear language in last year’s Spectrum Act directing the Commission to adopt rules that encourage broad auction participation and quick, widespread deployment of next-generation wireless services and devices across the 600 MHz spectrum.<sup>13</sup>

It also important for the Commission address the concerns of commenters who enumerate the harms posed by package bidding (or combinatorial bidding). Several commenters note that

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<sup>9</sup> Sprint Comments at 2.

<sup>10</sup> See 15th Wireless Competition Report, ¶ 2.

<sup>11</sup> 14th Wireless Competition Report ¶ 3; 15th Wireless Competition Report ¶ 2.

<sup>12</sup> Mobile Spectrum Holdings NPRM ¶ 14.

<sup>13</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6404, 126 Stat. 156, 230 (2012).

combinatorial bidding can enable larger carriers to acquire licenses at below market value. Allowing package bidding will generate lower auction proceeds and substantially increase the risk that smaller operators and new entrants who may place a higher valuation on a given individual license will be shut out.<sup>14</sup> U.S. Cellular shares this concern, saying, “combinatorial bidding adds yet another layer of complexity to an auction,” that disadvantages competitive operators.<sup>15</sup>

The record expresses a broad consensus of support for auction rules that will increase participation by competitive operators and new entrants. Moreover, the record reflects general agreement that the Commission must craft auction rules that will reduce spectrum consolidation going forward – particularly with regard to the concentration of low band spectrum.

## **II. THE COMMISSION’S BAND PLAN SHOULD MAXIMIZE LICENSED SPECTRUM AND PROMOTE COMPETITION**

The Commission should ensure that its band plan restores competition by making available as much licensed spectrum as is technologically feasible and by taking steps to ensure that devices deployed across the 600 MHz paired spectrum ecosystem are interoperable. The record reflects broad consensus on these critical aspects of the band plan.

There is vigorous and broad support for Commission efforts to ensure, not merely “encourage,”<sup>16</sup> interoperability across the 600 MHz band.<sup>17</sup> The widespread availability of devices will be critical to effective deployment in the 600 MHz band, and such device

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<sup>14</sup> See Leap Wireless Comments at 9, RTG Comments at 9.

<sup>15</sup> U.S. Cellular Comments at 51-53.

<sup>16</sup> NPRM ¶ 162.

<sup>17</sup> See, e.g., Leap Wireless Comments at 7; MetroPCS Comments at 28; U.S. Cellular Comments at 23-30; T-Mobile Comments at 21; Cellular South Comments at 7-8; Sprint Nextel Comments at 17; National Telecommunications Cooperative Association Comments at 2-3.

availability depends on interoperability across the band. That is why, prior to the auction, the Commission must establish clear rules requiring that all devices operating in the 600 MHz band be capable of operating across the entire band. Such a rule would ensure that deployments in this spectrum do not suffer from the stifling, anti-competitive harms that resulted from Auction 73. Without such rules, the 600 MHz spectrum will face the same sort of reduced consumer choice, absence of roaming opportunities, and limited deployment of next-generation wireless services across the country – especially in rural areas – that we are witnessing today in the Lower 700 MHz spectrum.<sup>18</sup>

Even with a pre-auction interoperability requirement in place, it will be critical for the Commission to ensure that no one operator or bidder accumulates all or nearly all (measured on a POPs basis) of the 600 MHz spectrum on a particular spectrum block or set of blocks.<sup>19</sup> C Spire agrees with the view of commenters, such as T-Mobile, who suggest the Commission should establish pre-auction rules limiting the total accumulation of POPs in each spectrum block—such that bidders must acquire spectrum across all or a substantially broad variety of blocks in order to ensure significant national POPs coverage.<sup>20</sup> As a result, no one carrier could create an essentially proprietary or “boutique” band specification after the close of the auction that would limit devices to operating only on that carrier’s licensed frequencies.<sup>21</sup>

Unless the Commission takes these sorts of aggressive steps to preserve interoperability in the 600 MHz spectrum, multiple incompatible band specifications could emerge (as they did

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<sup>18</sup> See T-Mobile Comments at 21.

<sup>19</sup> Id at 22.

<sup>20</sup> See Id.

<sup>21</sup> See Id.

in the Lower 700 MHz spectrum), reducing the incentive for OEMs to develop devices that are available to all licensees operating in the 600 MHz spectrum. And, as T-Mobile notes, “[t]he need to avoid this scenario – and to promote interoperability – is especially important as commercial operators migrate to the common LTE platform.”<sup>22</sup>

Block size will also impact competition and consumer access to services on the 600 MHz spectrum. There is broad consensus, including from AT&T and Verizon, that blocks of at least 5 MHz are necessary to accommodate the LTE deployments expected for the 600 MHz spectrum.<sup>23</sup> There is general agreement with C Spire’s view that these blocks should be licensed in geographic units no larger than Economic Areas (“EAs”).<sup>24</sup> While various rationales are offered in support of this position, the results of Auction 73 make clear that in order to ensure smaller and regional operators have substantive opportunities to win these licenses at auction – increasing auction participation and maximizing the potential revenue generated from the auction – geographic licenses no larger than EAs are the substantially better option.

Also important to competition and access are the steps the Commission takes to prevent spectrum warehousing. C Spire’s concerns regarding the need for strong build-out requirements, which help to prevent aggregation or spectrum warehousing, were echoed by other commenters.<sup>25</sup> C Spire believes that the proposed population-based approach to build-out

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<sup>22</sup> Id.

<sup>23</sup> See Verizon Comments at 15; AT&T Comments at 3; T-Mobile Comments at 14; MetroPCS Comments at 19; Leap Wireless Comments at 5. We also note that Sprint, at pp. 21-23 of its Comments, offers a thorough TDD-based proposal, which would allow for seven, nationwide blocks of 10 MHz. C Spire continues to evaluate this proposal and encourages the Commission to give this proposal full consideration.

<sup>24</sup> Leap Wireless Comments at 4-5; MetroPCS Comments at 18; at 7-8; Verizon Comments at 60; AT&T Comments at 54; U.S. Cellular Comments at 10-13; National Telecommunications Cooperative Association Comments at 3-5; Wireless Internet Service Providers Association Comments at 30-32.

<sup>25</sup> See, e.g., National Telecommunications Cooperative Association Comments at 5-6; Competitive Carriers Association Comments at 17.

requirements will fail to ensure that less densely populated communities – especially those that may fall within a license area that contains a large city – will have timely access to the most advanced mobile broadband services. The larger the size of the geographic license area, the risk of this outcome increases. To protect against this risk, the Commission should utilize geographic build-out requirements similar to those required of Lower 700 MHz A and B Block licensees (e.g., offering service to 35% of each geographic license area after 4 years and 70% of each geographic license area after 10 years). Such rigorous requirements significantly increase the chances that 600 MHz licensees will move quickly to deploy next generation wireless services to consumers in America’s vast non-urban areas.

Finally, the record demonstrates that wireless operators support the clearing of Channel 51. In particular, C Spire agrees with Leap Wireless’ view: an effective way to guarantee the clearing of Channel 51 is to implement an auction rule requiring that the very first spectrum to be licensed in any market include Channel 51.<sup>26</sup> By pursuing this path, the Commission would ensure the incentive auction will clear Channel 51 nationwide.

## **CONCLUSION**

The clearing and auction of 600 MHz spectrum for mobile broadband services is an important opportunity for economic growth and improved access for American wireless consumers. As the record indicates, this auction faces several significant risks that could further stifle wireless competition and, thus, consumer access to advanced mobile broadband services. It is therefore critical that the Commission closely and objectively examine the record, especially in

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<sup>26</sup> See Leap Wireless Comments at 10-12.

the context of today's highly consolidated wireless industry, and adopt predictable, fair auction structures and service rules that will promote competition, rather than further consolidation.

Respectfully submitted,

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